Simron, Inc. (Simron)

- Simron favors elimination of limitations such as loading and the 40-mile rule for CMRS SMRs. However, to the extent that these limitations are retained, the Commission should not apply any attribution by management contract to find violations among 220 MHz licensees. (3)

- As is common in the 220 MHz context, Simron has entered into management agreements based on the Commission's current practices, i.e., that *bona fide* management agreements are not attributable and cannot cause violations of the Commission's 220 MHz licensing rules. A retroactive reversal of this policy would injure numerous licensees that have relied on this policy. (4)

- Moreover, 220 MHz licensees cannot materially affect the amount of spectrum necessary to cause anti-competitive concerns. All of the 220 MHz licenses as a whole occupy only 2 MHz of spectrum -- of that 2 MHz, 1 MHz is used by local SMR licensees. (4)

- As a result, the Commission should not consider management agreements for or among 220 MHz licensees as attributable in determining compliance with its 220 MHz spectrum allocation rules. (5)

- To the extent that the Commission recognizes *bona fide* management agreements for purposes of applying PCS or CMRS spectrum caps, it should permit the managers to act on behalf of their managed systems in making unified filings with the Commission in the following carefully subscribed circumstances:

  - the filing at issue has equal applicability to all or substantially all of the systems in an area managed by a single entity, such as a request for extension of time to complete construction, a routine notification of completion of construction, or participation in rule making proceedings;

  - any unified filing will not diminish the amount of filing or regulatory fees that otherwise would be paid to the Commission;

  - the manager has written authority from the licensee to make such a filing, which authority will be available for Commission inspection on request;

  - the filing indicates that the manager is a party to a written management agreement with the licensee, and that the manager possesses written authority to make the filing;

- the manager's authority cannot extend to filings of individual nature, such as applications or amendments thereto, unless the manager has authority by virtue of its ownership interest in the licensee. (6)

Southwestern Bell Corporation (SBC)

- If a management agreement or joint marketing arrangement does not transfer control of the underlying license (and therefore is lawful), it cannot create the problems for which the attribution standards were created, and the Commission's inquiry should be over. (4)

- The Commission's mistrust of management agreements misunderstands the nature of such arrangements. (5)

- Both federal antitrust laws and state rules on corporate governance impose a fiduciary duty on owners and key managers to protect company assets. This serves as a powerful deterrent to inappropriate use of such information. (6)

- The Commission's concern demeans the designated entity's ability to protect the value of its investment and the fruits of risk-taking. No reasonable business person would enter into a management agreement with an actual or potential competitor without stringent, enforceable provisions regarding the use of confidential information. (6)

- Because existing safeguards are adequate to protect against the kind of abuses envisioned by the Commission, it need not and should not expand the definition of attributable interests to include management agreements and joint ventures. (6)

- The Commission's proposal will have a negative impact on designated entities by foreclosing to other companies any significant equity, financing, and now management interest in the licenses held by designated entities. (7)

- At a minimum, the Commission should clarify that any rule that attributes ownership based on joint marketing arrangements does not encompass service mark and trademark licensing (i.e., Cellular One and MobiLink) and interoperability arrangements (i.e., North American Cellular Network). (8)

- To attribute ownership based on a broad definition or application of joint marketing agreements would not further the elimination of the Commission's concerns because under both types of arrangements, only minimal information is shared between carriers. (9)

- Attribution would effectively tell participants that their considerable efforts to achieve customer and market oriented goals such as seamless nationwide service are disfavored by the FCC. (9)

Vanguard Cellular Systems, Inc. (Vanguard)

- Vanguard, along with McCaw and Southwestern Bell Mobile Systems, is one of the three owners of Cellular One. (2)

- Vanguard submits that the nature of Cellular One is such that it should be excluded from any attribution requirements that may be adopted for joint marketing arrangements. (2)

- Cellular One and MobiLink do not have the same implications as joint marketing by two or more radio stations in a single market, and carrier participation benefits consumers. (2)

- Cellular One allows non-wireline carriers to use a service mark and associated marketing materials, and engages in marketing activities for participants. A carrier's right to use the service mark is strictly geographically delineated. Although there is some incidental overlap in marketing, parties to Cellular One do not pool resources to sell their service to customers in a single market. Because only Block A carriers participate, there cannot be any meaningful overlap between service areas of parties to the Cellular One agreement. (3-4)

- As a result, the relationship among cellular carriers in Cellular One are different than the kinds of joint marketing arrangements that trigger attribution in the broadcast context. Cellular One is much more like network affiliation, where there is no attribution. (4)

- Agreements like Cellular One benefit consumers by allowing carriers to charge lower prices and representing a level of quality and certain features of cellular service that are recognized by consumers. (4-5)

- Consumers also benefit from the competition between carriers that participate in Cellular One and those that participate in similar arrangements such as MobiLink. (5)

- Treating joint marketing arrangements as attributable could also have unintended consequences. For example, cellular carriers that are now eligible for a 30 MHz PCS authorization could be deemed ineligible merely because another carrier on the other side of the MTA has joined the Cellular One agreement. Similarly, a carrier that is eligible today could have its eligibility curtailed if a nearby cellular carrier joined the Cellular One agreement at a later date. (6)